UNITED NATIONS

General Assembly

FORTY-EIGHTH SESSION

Official Records

FIFTH COMMITTEE
58th meeting
held on
Wednesday, 30 March 1994
at 10 a.m.
New York

SUMMARY RECORD OF THE 58th MEETING

Chairman: Mrs. EMERSON (Portugal)
(Vice-Chairman)

Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. MSELLE

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AGENDA ITEM 159: FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 (continued)

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Distr. GENERAL
A/C.5/48/SR.58
28 April 1994
ENGLISH
ORIGINAL: SPANISH

94-80584 (E)

The meeting was called to order at 10.35 a.m.

AGENDA ITEM 159: FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 (continued) (A/C.5/48/36, A/C.5/48/44 and Add.1, A/C.5/48/68 and A/48/915)

1. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that many delegations had been unable to study the report of the Advisory Committee (A/48/915) since it had not been available until that morning. It had been a difficult report to prepare since the Advisory Committee had originally thought of recommending that authorization be given to enter into commitments not exceeding $5.6 million for the Tribunal during the first six months with the intention of subsequently considering a further report from the Secretary-General once the situation with regard to the financing of the Tribunal and its location was clear enough for the Secretary-General to report appropriately to the General Assembly. However, in view of the importance which Member States attached to the item, the Advisory Committee had found itself obliged to consider it at the present stage. For that purpose it had received the report of the Secretary-General (A/C.5/48/44/Add.1), which in part updated the earlier report (A/C.5/48/44).

2. Introducing the report of the Advisory Committee, he referred in particular to section II (Conditions of service and allowances of the members of the International Tribunal) and said that the observations set out therein were the result of lengthy and heated debate in the Committee. As for section III (Revised estimates relating to the financing of the International Tribunal in 1994-1995), he said that, since some questions, including the negotiations between the United Nations and the host country concerning the seat of the Tribunal, had still not been resolved, the Advisory Committee requested the Secretary-General to submit, by 1 November 1994, a further report on the International Tribunal updating the information and taking into account new developments and other aspects relating to the contractual situation and conditions of service of the staff of the Tribunal. In particular, he drew the attention of the Fifth Committee and the Secretariat to paragraph 18, concerning the seat of the Tribunal, and said that the Advisory Committee's intention should not be misinterpreted. There was nothing in that paragraph which prevented the Secretariat from continuing the necessary negotiations concerning the seat of the Tribunal; the Secretary-General was only requested to expedite those negotiations and to report on the outcome prior to the signature of any agreement. That procedure had already been followed in similar situations. As for the Trust Fund for the International Tribunal, pledges had already been made in the amount of $3,363,000, a figure which, under the terms of the Trust Fund, must be taken into account when additional resources were requested from Member States. The authorization to enter into further commitments was for only one year, in other words, until 31 December 1994. According to the Advisory Committee, $11 million should be sufficient; that figure included the $5,594,000 already approved by the General Assembly on the recommendation of the Advisory Committee. The Advisory Committee also pointed out that a decision on the mode of financing of the Tribunal was still pending.

3. Mr. TAKASU (Controller), introducing the reports of the Secretary-General (A/C.5/48/36, A/C.5/48/44 and Add.1), said that, in December 1993, during the regular session, the Secretary-General had proposed a sum of $33.2 million to finance the activities of the Tribunal in 1994 and 1995. The General Assembly, on the basis of the recommendations of the Advisory Committee, had decided to authorize the Secretary-General to enter into commitments not exceeding $5.6 million for the first six months of 1994, pending a definitive decision on the mode of financing of the Tribunal and without prejudice to the recommendations that the Advisory Committee might make to the General Assembly and to the decisions that the Assembly might take thereon with regard to administrative matters such as the location of the Tribunal, the levels and number of staff and the conditions of service of the judges and staff. The General Assembly had also decided to study the mode of financing of the Tribunal during the latter part of the session. Delegations were asked to consider the revised estimates (A/C.5/48/44/Add.1) based on updated information and data together with the earlier report of the Secretary-General on the financing of the Tribunal (A/C.5/48/44). According to the latest estimates, the requirements for 1994-1995 totalled $32,642,700. In paragraph 22 of the revised estimates, and on the basis of the earlier recommendations of the Advisory Committee, the Secretary-General asked the General Assembly to indicate its agreement to The Hague as the seat of the Tribunal, to approve resources for the Tribunal for the biennium 1994-1995, and to determine the mode of financing of the Tribunal and the conditions of service of its members.

4. Although the Secretariat was fully aware of the uncertainty created by certain elements of the estimated expenditure, a number of practical steps had already been taken, such as the election by the General Assembly of 11 judges for four years and the appointment of an Acting Registrar and an Acting Deputy Prosecutor, and negotiations with the authorities of the Netherlands on the practical requirements connected with the premises of the Tribunal were well advanced. Thus, the Secretary-General needed the General Assembly's authorization to enter into commitments, first, so as to be able to offer clear and stable conditions of service to the judges, now that they had been elected for four years, since previously, when funds had been available only for the first six months, their remuneration had been calculated on a daily basis. Second, it was necessary for the location of the seat to be confirmed. The Secretary-General should also be given the means to sign a contract, preferably for four years, for the rental of the premises of the Tribunal. Third, it was necessary to offer security of employment by means of one-year contracts to the highly specialized staff needed by the Tribunal. The present arrangements had allowed only short contracts to be offered and it was therefore very difficult to retain highly qualified international staff. Unless those matters were resolved, the Tribunal could not begin to work effectively.

5. Mr. HAMMARSKJÖLD (Sweden), speaking on behalf of the five Nordic countries, said that it was critically important that the General Assembly should take a decision that would ensure that the Secretary-General had the resources necessary for the functioning of the Tribunal in accordance with the new timetable for its operations as described in document A/C.5/48/44/Add.1. In general, he supported the revised estimates indicated in paragraph 19 of that document and hoped that the Secretary-General's proposals would form the basis for a consensus. At the same time, he noted that it might be necessary to submit further revised estimates to the General Assembly at its forty-ninth

(Mr. Hammarskjöld, Sweden)

session given the hypothetical nature of certain elements, such as the number of posts needed, on which the requirements were based at the present stage. The Nordic countries had already supported the choice of The Hague as the seat of the Tribunal.

6. The Nordic countries considered that the observations and recommendations set out in the report of the Advisory Committee on Administrative and Budgetary Questions (A/48/915) were clearly pertinent and in accordance with the usual budgetary practice of the United Nations. With regard to the conditions of service of the members of the Tribunal, the judges would be working full time and should receive their salary on an annual basis. Similarly, the Nordic countries agreed with the recommendation of the Advisory Committee that other entitlements, such as pensions, should be reviewed when further information was available. In order to facilitate a speedy decision, the Nordic countries were ready to join the consensus based on the recommendations of the Advisory Committee on the understanding that the General Assembly would grant the Secretary-General the necessary degree of flexibility to enter into agreement with the host country and to engage the staff, so that the Tribunal would be able to begin its important work without delays caused by administrative constraints. As a matter of principle, the Secretary-General should be authorized to assess among Member States the amounts authorized for a new activity for which funds had not been provided. Lastly, the Nordic countries fully agreed with the Secretary-General that the nature of the activities to be undertaken required that their core funding should be through assessed contributions. They emphasized that the administration of justice by the United Nations must be in the name of the Organization and under the responsibility of all its Member States. The inclusion of the Tribunal in the regular budget was essential to the safeguarding of its absolute independence and the full financing of its activities. In that connection, the Nordic countries took note of the proposal by the Secretary-General on the use of voluntary contributions.

7. Mr. ZEVELAKIS (Greece), speaking on behalf of the European Union, reaffirmed the view expressed on previous occasions that the Fifth Committee should conclude its consideration of agenda item 159 as soon as possible, bearing in mind the special importance of the smooth running of the Tribunal, but requested the postponement of decisions to a later meeting so as to enable delegations to give careful consideration to the report of the Advisory Committee.

8. Ms. GRAHAM (United States of America) endorsed the opinions expressed by earlier speakers concerning the critical importance of the Tribunal and the need to make the necessary funds for its operation available without delay. In that connection she said that the Tribunal should be financed from the regular budget.

9. Ms. GOICOCHEA (Cuba) regretted that the report of the Advisory Committee and the addendum to the report of the Secretary-General had been made available barely 24 hours before the end of that Committee's work, and said that the matter should be studied further at a subsequent meeting. She agreed on the need to provide the Tribunal with the resources necessary for its smooth operation, but considered that it should be financed from the special account

(Ms. Goicochea, Cuba)

and not from the regular budget. In that connection, she agreed with what was stated in General Assembly resolution 47/235, to the effect that it was for the Assembly to consider and approve the budget of the Organization and to determine the apportionment of its expenses among the Member States, and indicated that the decision of the Security Council that the expenses of the Tribunal should be financed from the regular budget seemed to her unfortunate.

10. Mr. JADMANI (Pakistan) recalled that his delegation had voted in favour of Security Council resolution 827 (1993), which had created the Tribunal and adopted its Statute, and said that his country attached great importance to the functioning of the Tribunal. For that reason his delegation was pleased to note that the Tribunal was well advanced in its preparations for the investigative and judicial phases of its operation, as its President had indicated in his letter of 18 February 1994 addressed to the Chairman of the Fifth Committee (A/C.5/48/68). It would, however, be a matter for regret if the ability of the Tribunal to fulfil its mandate were restricted by the lack of funds. Unfortunately, the recommendation in paragraph 21 of the report of the Advisory Committee (A/48/915) was not very encouraging, since it was another provisional arrangement the consequences of which might adversely affect the sound operation of the Tribunal. In that context, he pointed out that his Government had paid a total of $1 million as a voluntary contribution to the Trust Fund for the Tribunal established by the Secretary-General. The main subject to be considered by the Fifth Committee was, therefore, the mode of financing; specifically, and given that it had been agreed that financing had to come from assessed contributions so as to ensure the Tribunal's neutrality and impartiality, the Fifth Committee should take a permanent decision with regard to the apportionment of those assessments.

11. Ms. PEÑA (Mexico) associated herself with the requests made by the delegations of Greece and Cuba that the debate on the item should be left open, and expressed her reservations as to the financing of the Tribunal from the regular budget.

12. Mr. FRANCIS (Australia) said that his delegation attached great importance to the full and efficient functioning of the Tribunal and believed that the Committee should lose no time in providing stable financing to ensure the Tribunal's sound operation. In that connection, he considered the recommendation of the Advisory Committee that the Secretary-General should continue to be authorized to enter into commitments without assessing the amounts to be unsatisfactory. The fact that the General Assembly had not provided stable funding for the Tribunal had a political dimension, and might also give the impression that the international community was not fully committed to bringing to trial the persons responsible for the violations of humanitarian law which had occurred in the former Yugoslavia; efforts should be made to avoid creating such an impression.

13. Mr. DAMICO (Brazil) said that his delegation's firm support for the activities of the Tribunal was demonstrated by the fact that it had voted in favour of Security Council resolution 827 (1993) establishing the Tribunal. However, he recalled that, on that occasion, his delegation had emphasized that in view of the far-reaching political and legal implications of the initiative,

(Mr. Damico, Brazil)

the matter ought to have been brought to the attention of the General Assembly. His delegation therefore welcomed the resolution adopted by the General Assembly in the latter part of its forty-seventh session in which it reaffirmed that, in accordance with the Charter, decisions concerning the mode of financing of United Nations activities were to be taken by the Assembly. In that connection, his delegation was of the view that, apart from the decisions to be taken in connection with the apportionment of the expenses of the Tribunal, new resources were required to ensure a sound financial basis for its activities, and that Member States were clearly committed to ensuring the sound operation of the Tribunal. It would not be appropriate for its important activities to have to adjust to the narrow limits imposed by the present levels of resources assigned to the programme budget, since that would entail cuts in other activities of the Organization. Lastly, his delegation supported the recommendations of the Advisory Committee to the effect that, at the present stage, a commitment authority should be granted to finance the activities of the Tribunal. The innovative character of that activity required that, before a decision was taken on the amount of resources to be allocated, the Secretariat should be given further time to submit more comprehensive information.

14. Mr. NDOBOLI (Uganda) trusted that the Committee would decide in favour of financing the Tribunal from contributions, thus settling the main problem of the Tribunal's financing. He also expressed the hope that the economically more developed States would be in a position to contribute more fully to the financing and that the remaining outstanding matters would be solved amicably so that the work of the Tribunal could begin without delay.

15. Mr. TARZI (Saudi Arabia) endorsed the opinions expressed by the delegations of Australia and Pakistan and, with respect to the mode of financing, indicated the agreement of his delegation to the assessment of the necessary sums on all Member States.

16. Mr. MAIGA (Mali) said that his delegation was in favour of financing the Tribunal from the regular budget. He commended the Secretariat on the measures taken so far to initiate the activities of the Tribunal, and pointed out that it was for the Fifth Committee and for the General Assembly to ensure the implementation of the policy decision adopted by the Security Council and to safeguard the sound operation of the Tribunal.

17. Mr. ZAHID (Morocco) said that it was important that the Tribunal should begin its operations without delay, and emphasized the need to provide it with a stable and secure financial basis. In that connection, he asked the Controller whether the resources authorized by the Advisory Committee would be adequate for the normal operation of the Tribunal, and how those resources would be financed, bearing in mind that they were not to be assessed. With respect to the mode of financing, his delegation was ready to consider the various possibilities that existed, and he suggested that, if the present procedure were maintained, in other words if the Secretary-General were authorized to enter into commitments for a specific sum, a time-limit of three or six months should be set for reconsideration of the matter by the Committee and the adoption of a definitive decision thereon.

18. Ms. SAEKI (Japan) said that in order to ensure stable funding for the Tribunal it should be financed from the regular budget.

19. Mr. BARIMANI (Islamic Republic of Iran) endorsed the opinions expressed by the delegations of Pakistan, Mali and Saudi Arabia and, with reference to the question of the mode of financing of the Tribunal, said that it should be funded from the regular budget.

20. Mr. TAKASU (Controller), in reply to the questions put by the representative of Morocco, said that the main question that arose in relation to the present mode of financing of the Tribunal was not so much whether the resources approved by the Advisory Committee would be adequate but rather the Secretary-General's room for manoeuvre, particularly in engaging staff, ensuring specific conditions of service and negotiating a rental contract for the premises of the Tribunal for a further year. Those issues were fundamental to the sound operation of the Tribunal, together with securing stable and adequate funding which would make it possible to comply with the authorizations to commit funds.

The meeting rose at 11.35 a.m.